

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

NATHANIEL BONTY,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-06-698-F
)	
LT. PLASTER, <i>et al.</i> ,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION
ON MOTION FOR A DEFAULT JUDGMENT

Mr. Bonty seeks a default judgment against Defendant James Bryant. The Court should deny the Plaintiff's request.

According to Mr. Bonty, he served James Bryant with a copy of summons and the amended complaint. Four defendants disagree, noting that the docket sheet reflects that the Court has not issued a summons for Mr. Bryant.

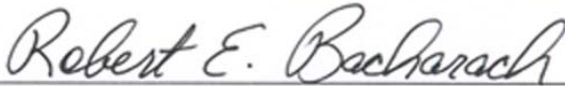
Mr. Bonty did prepare a praecipe for summons and other documents for the marshals to attempt service on James Bryant. Unfortunately, the Plaintiff's documents were misfiled. The Court has rectified the mistake, filing Mr. Bonty's praecipe and directing the United States Marshal's Service to attempt service on James Bryant at the address Mr. Bonty provided.

The Plaintiff was not at fault for the error. But because of the error, Mr. Bonty lacked a court-issued summons, invalidating his previous service attempt on Mr. Bryant.¹ For this reason, the Court should deny the Plaintiff's request for a default judgment against Mr. Bryant.

The parties have the right to object to this report and recommendation. *See* 28 U.S.C. § 636(b)(1) (2000); W.D. Okla. LCvR 72.1. Any such objection must be filed with the Court Clerk for the United States District Court. *See Haney v. Addison*, 175 F.3d 1217, 1219-20 (10th Cir. 1999). The deadline for objections is February 15, 2007. *See* W.D. Okla. LCvR 72.1(a). The failure to timely object to this report and recommendation would waive one's right to appellate review of the suggested ruling. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This report and recommendation does not terminate the referral.

Entered this 26th day of January, 2007.



Robert E. Bacharach
United States Magistrate Judge

¹ *See, e.g., Ayres v. Jacobs & Crumplar, P.A.*, 99 F.3d 565, 568-70 (3d Cir. 1996) (affirming dismissal for lack of proper service, because “[a] summons which is not signed and sealed by the Clerk of the Court does not confer personal jurisdiction over the defendant”); *see also Cloyd v. Arthur Andersen & Co., Inc.*, 25 F.3d 1056, 1994 WL 242184, Westlaw op. at 1 (10th Cir. June 7, 1994) (unpublished op.) (summons, not signed or issued by the clerk of the court, was “incurably defective” (citing Fed. R. Civ. P. 4(b))).